

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1209 of 1996

in

SPECIAL CIVIL APPLICATION No 3132 of 1995

with

LETTERS PATENT APPEAL NO. 1313 OF 1996

in

SPECIAL CIVIL APPLICATION NO. 3132 OF 1995

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

RASIKLAL CHANDULAL SHAH

Versus

CENTRAL AEXCISE & CUSTOMS DEPARTMENT

Appearance:

MR MB GANDHI for Appellant

MR JAYANT PATEL for Respondent No. 1, 2

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE A.L.DAVE

Date of decision: 25/10/1999

ORAL JUDGEMENT (Per Panchal, J.)

#. Both these appeals, which are instituted under Clause 15 of the Letters Patent, are directed against judgment dated August 21, 1996, rendered by the learned Single Judge in Special Civil Application No.3132 of 1995. As the appeals involve determination of common questions of facts as well as law, we propose to dispose them of by this common judgment.

#. The appellant in Letters Patent Appeal 1209 of 1996 is the owner of property bearing Block No.2 situated in the building known as 'Stadium House', located at Navrangpura, Ahmedabad. Block No.2 admeasuring 105.02 sq. metres was hired by the original respondents, i.e. by Central Excise and Customs Department and Union of India. A lease deed between the parties was executed and rent to be paid by the original respondents was also specified therein. The Directorate of Estates, Government of India, issued office memorandum dated September 1, 1982 stipulating that rent payable to the landlord should be got reassessed from the Central Public Works Department ('CPWD' for short) on the expiry of a period of five years from the date of original assessment or the date of issuance of the office memorandum, whichever is later and after every five years thereafter. According to the petitioner, the CPWD issued certificate dated December 17, 1993 which was to be effective from September 9, 1993 and rent payable from September 9, 1993 was determined to be Rs.10,128/- per month. The grievance made by the petitioner was that in spite of certificate dated December 17, 1993 issued by CPWD, the department was paying rent as per old rates. It was also averred that the rent was reassessed by CPWD vide its certificate dated December 17, 1994 and the petitioner was entitled to receive the rent according to the said certificate. As the original petitioner was not paid rent revised as per two certificates which are referred to hereinabove, the petitioner filed Special Civil Application No.3132 of 1995 and prayed the Court to issue a writ of mandamus directing the respondents to implement the assessment made by CPWD as per certificate dated December 17, 1994 and to make the payment of rent at the rates stated therein. The petitioner also prayed to direct the respondents to clear the accounts for the period prior to September 9, 1993 and to make the payment of difference amount accrued to the petitioner owing to less payment made by the respondents.

#. An affidavit in was filed on behalf of original respondents controverting the averments made in the petition. It was, inter alia, pleaded therein that as the lease deed was not renewed after the expiry of initial period of lease, the Union of India had become statutory tenant and in view of the provisions of the Bombay Rent Act, the petition was not maintainable. What was stressed in the reply was that as alternative remedy of approaching Small Causes Court under the provisions of the Bombay Rent Act was available to the original petitioner, the petition should be dismissed.

#. After hearing the learned counsel for the parties, the learned Single Judge has allowed Special Civil Application No.3132 of 1995 by the impugned judgment giving rise to Letters Patent Appeal No.1313 of 1996 by the department. The original petitioner has filed Letters Patent Appeal No.1209 of 1996 against that part of the judgment of the learned Single Judge by which the petitioner is denied the relief of interest on arrears of rent ordered to be paid to him.

#. The submission that High Court had no jurisdiction to entertain the petition under Article 226 of the Constitution in view of the provisions of Section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, cannot be accepted. Article 226 not being one of those provisions of the Constitution which may be changed by ordinary legislation, the powers under Article 226 cannot be taken away or curtailed by any legislation short of amendment of the Constitution. It is well settled the even where a statutory provision bars the jurisdiction of Courts, generally, it will not bar the jurisdiction of the High Court under Article 226. Having regard to the facts of the case, it cannot be said that there was inherent lack of jurisdiction in entertaining petition filed by the petitioner under Article 226 of the Constitution and, therefore, the plea that the impugned judgment should be set aside as the High Court had no jurisdiction to entertain the petition under Article 226 will have to be rejected and is hereby rejected.

#. The plea that in view of the alternative remedy available under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the petition should not have been entertained and the petitioner should have been relegated to the alternative remedy

available to him under the said Act also cannot be accepted at this stage. It may be stated that another owner of the premises had filed Special Civil Application No.6435 of 1991 claiming similar relief and therein notice was ordered to be issued to the respondents, i.e. the department, at the admission stage. The department had filed reply contesting the petition, inter alia, on the ground that alternative remedy was available under the Rent Act and, therefore, the petition should not be entertained. However, after hearing the learned counsel for the parties at length, the learned Single Judge had thought it fit to issue Rule and had entertained the petition. Thereafter, Special Civil Application No.3132 of 1995, out of which Letters Patent Appeal No.1313 of 1996 arises, was placed for admission hearing and as petition involving similar question was admitted earlier, this petition was also admitted and Rule was issued therein. It is well settled that once the petition is admitted, it should not be rejected on the ground that alternative remedy is available to the petitioner (see *Hirday Narain v. Income Tax Officer, Bareilly*, AIR 1971 SC 33, paragraph 12). The petition filed by the original petitioner was not only entertained by the learned Single Judge, but was heard on merits of the case. Moreover, with reference to Special Civil Application No.2398 of 1993, the Enforcement Directorate had addressed a letter dated March 19, 1996 to the Additional Central Government Standing Counsel and requested him to bring to the notice of the Court instructions contained in the said letter. By the said letter, the department had shown its readiness and willingness to pay rent based on recognized principle of valuation as per the Government's usual practice in this regard, i.e. Rs.6600/- per month with effect from June 13, 1987 and Rs.12,440/- per month with effect from June 13, 1992 and had left the matter specifically to the decision of the High Court. When the department had agreed to pay revised rent on the basis of recognized principle of valuation from June 13, 1987 and subsequently from June 13, 1992, it would have been unreasonable to relegate the original petitioner to alternative remedy available to him under the Rent Act for the purpose of revision of rent. 1987. Having regard to all these circumstances, we are of the opinion that no error was committed by the learned Single Judge in entertaining the petition on merits, though plea of alternative remedy under the Rent Act was raised.

#. The contention that fixation of rent at the rate of Rs.8078/- per month for the period of five years commencing from 1992 is unreasonable and, therefore, the impugned judgment should be set aside is devoid of

merits. It may be stated that by addressed a letter dated March 19, 1996, the Enforcement Directorate had instructed the learned Additional Central Government Standing Counsel to bring the factt to the notice of the Court that the department was agreeable to pay revised rent from June 3, 1987 and subsequently from June 13, 1992, as per recognized principle of valuation. By the said letter, the determination of rent was left specifically to the decision of the High Court. It was not in dispute that under certificate dated September 9, 1988, the CPWD had assessed rent of the subject premises between Rs.4718/- and Rs.5330/-. Therefore, the learned Single Judge was justified in taking the average of the aforesaid two figures and coming to the conclusion that the revised rent for the said period should be Rs.5024/per month. In fact, the learned Single Judge in the impugned judgment has observed that the original respondents had no objection in fixing the rent and paying the same on the aforesaid basis and this observation is not challenged by the department in the appeal. It was not in dispute that under certificate dated December 7, 1993, rent of the premises was assessed between Rs.6446/- and Rs.9409/-. Therefore, we are of the opinion that the learned Single Judge was justified in taking average of the above referred two figures and holding that the rent should be Rs.8078/- per month for the period of five years commencing from 1992. Thus, it becomes evident that the learned Single Judge determined rent for different periods on specific concession made by the Department in its letter dated March 19, 1996, which was produced before the learned Single Judge and, therefore, no ground is made out by the department to interfere with the same in the present appeal.

#. Thus, we do not find any substance in any of the contentions urged on behalf of the appellants in Letters Patent Appeal No.1313 of 1996 and the same is liable to be dismissed.

##. So far as appeal filed by the owner of the property claiming interest on arrears of rent is concerned, we find that the learned Single Judge has exercised discretion of not granting interest to the owner of the property for arrears of rent. The exercise of the discretion cannot be said to be unreasonable or arbitrary so as to warrant interference by this Court in the appeal. In fact, the department could not pay the revised amount of rent because of non-availability of certificate from CPWD for which the department cannot be penalized. Having regard to the fair stand which was taken by the department, as is reflected in its letter

dated March 19, 1996, we are of the opinion that the learned Single Judge was justified in not entertaining the prayer made by the owner of the property to direct the respondents to pay arrears of rent with interest. On overall view of the matter, we do not think that any error is committed by the learned Single Judge in not awarding interest to the owner of the property so far as arrears of rent are concerned. Under the circumstances, Letters Patent Appeal No.1209 of 1996 filed by the owner of the property claiming interest is also liable to be dismissed.

##. For the foregoing reasons, both the appeals fail and are dismissed with no orders as to costs.

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